IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

Crl.MC.No. 1464 of 2007()

AGAINST THE ORDER IN CC.629/2005 IN
CMP.646/2007 OF J.F.C.M-II, KASARAGOD

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PETITIONER: ACCUSED

JOSEPH VARGHESE, S/O.VARGHESE,
RESIDING AT MALANKUNDU, P.O.MANADUKKM,
BANDADKA VILLAGE, KASARAGOD DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SISUPALAN NAIR, S/O.RAGHAVAN NAIR,
RESIDING AT SARANYA NILAYAM, P.O.MULIYAR,
MULIYAR VILLAGE, KASARAGOD DISTRICT.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1464 of 2007

Dated this the 26th day of June 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. The trial in the case is almost over. The matter is at the stage of defence evidence. At that stage, the petitioner filed two applications. They were dismissed by Annexures 3 and 4. The petitioner claims to be aggrieved by Annexure 3 and 4 orders.

2. In the prosecution under Section 138 of the Negotiable Instruments Act, the complainant took the stand that the cheque for Rs.85,000/- was issued to discharge the total liability of Rs.1,25,000/- towards which an amount of Rs.40,000/- had already been given. The details of the liability was not pleaded in the complaint. In the course of cross-examination, it was explained that the liability arose in respect of a vehicle transaction. The complainant stated that the transaction was in respect of a vehicle, a jeep bearing No.KL-7E 1573. According to the learned counsel for the complainant, this was an error in

recording and the real number of the vehicle is KL-7B 1573. At the defence stage, the accused wanted the complainant to produce documents in respect of KL-7E 1573. That petition was dismissed by Annexure 3 order by the learned Magistrate. Thereafter, the accused wanted the RC particulars of the said vehicle KL-7E 1573 to be produced. That petition was dismissed by Annexure 4. The petitioner claims to be aggrieved by Annexures 3 and 4 orders.

3. The learned counsel for the complainant submits that the complainant has no objection whatsoever in producing the documents in respect of KL-7B 1573 which is a jeep and in respect of which, according to him, the transaction had taken place. He has no objection also in the accused producing document relating to KL-7E 1573 though, of course, he contends that it is only absolutely irrelevant. To purchase peace and TO ensure expedition, the learned counsel for the respondent/complainant submits that both Annexures 3 and 4 must be set aside and the complainant may be given permission to produce documents in respect of Vehicle KL-7B 1573. Annexure 4 order may be set aside and the documents relating

to vehicle KL-7E 1573 for whatever it is worth can also be received. I find the said stand taken by the learned counsel for the respondent to be absolutely fair and just. The petitioner cannot have any surviving grievance. Annexures 3 and 4 are, in these circumstances, set aside and the complainant shall be permitted to produce documents in respect of vehicle KL-7B 1573 and the petitioner shall be permitted to produce documents in respect of vehicle KL-7E 1573. The question whether that is a mis-statement or an error in recording will of course be decided in the course of the trial.

4. This Criminal Miscellaneous Case is accordingly allowed in part to the above extent.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007